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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,378	03/26/2004	Edward J. Brooks III	102.0010002	8637

38356 7590 04/22/2005

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EXAMINER

WILKENS, JANET MARIE

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,378

Applicant(s)

BROOKS, EDWARD J.

Examiner

Janet M. Wilkens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-91 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65-91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/26/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Specification

The substitute specification filed March 26, 2004 has been entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 65-91 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,715,503. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and patent teach an umbrella comprising a post having an upper end capable of supporting an umbrella top, a lower end for insertion into the ground, handles/hand levers attached to the post at a first region, and handles/foot levers attached to the post at a second region. All of the handles pivot between a first position wherein the handles are perpendicular to the length of the post to a second position wherein the handles are parallel to the length of the post. In the

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first positions the handles are releasably locked. Although the patent fails to specifically teach that the handles are spaced greater than two feet apart, it would have been an obvious design consideration to one of ordinary skill in the art to construct the assembly of the patent by spacing the handles at least two feet apart, depending on the desired need of the person constructing the assembly.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 65, 69, 73, 74, 77, 78, 82 and 90 are rejected under 35

U.S.C. 102(b) as being anticipated by Vesely. Vesely teaches an “umbrella” post (3) having an upper end capable of supporting an umbrella top (inserted into post 3 is post 2; an umbrella top “capable” of being attached to the second type of post and then inserted into post 3); a lower end for insertion into the ground (4-6); a pair of handles/hand levers (15) attached to the posts at a first region; and three handles/foot levers (10) attached to the post at a second region. Since all of the features of the post are provided by Vesely, the method of manufacturing steps being inherent. Note: the term “umbrella” is simply nomenclature; Vesely teaching all of the limitations found in the bodies of the claims.

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Claims 65-86 and 89-91 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark. Clark teaches an "umbrella" post (11) having an upper end capable of supporting an umbrella top (an umbrella top "capable" of being supported by/set on the upper portion of the upper end via members 20,17,12); a lower end (10) for insertion into the ground; two handles/hand levers (17) attached to the post at a first region (at the top thereof); and four handles/foot levers (30) attached to the post at a second region. All of the handles pivot between a first position wherein the handles are perpendicular to the length of the post (Fig. 1) to a second position wherein the handles are parallel to the length of the post (Fig.2). In the first positions the handles are releasably locked via bolts and screws and pins. Since all of the features of the post are provided by Clark, the method of manufacturing steps being inherent. Note: the term "umbrella" is simply nomenclature; Clark teaching all of the limitations found in the bodies of the claims. Furthermore, fabric member 20 could be considered an "umbrella" top.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 88 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark. As stated above, Clark teaches the limitations of claim 86, including a post with handles. For claim 88, Clark fails to specifically teach that the handles are spaced greater than two feet apart. It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to construct the assembly of Clark by spacing the handles at least two feet apart, depending on the desired need of the person constructing the assembly, e.g. depending on the type of person to be sitting on the support, etc.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wilkens
April 12, 2005


JANET M. WILKENS
PRIMARY EXAMINER
A 2637